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$80,000 in 'tax' refunded

The Employees Retirement System of R.I. gets back money connected to the sale of the former American Express Building.

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The Rhode Island Division of Taxation has agreed to refund $80,000 to the state pension fund after the division agreed that the fund was exempt from paying a "conveyance tax" on the sale of a downtown Providence office building last year.

The Employees Retirement System of Rhode Island sold the four-story Gateway Building, formerly the American Express Building, in August for $20 million.

At the time of the sale, the pension system argued that as an agent of state government, it was exempt from paying the conveyance tax. However, it agreed to pay the tax, under protest, so as not to derail the sale of the building.

The state's general laws require a conveyance tax to be paid by the seller of any real estate in

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$80,000

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the state in which the sale price exceeds $100. The tax is $2 for each $500 paid for the property, which amounts to 4/10 of 1 percent. The seller is responsible for paying the tax, according to the law.

About 15 percent of the conveyance tax money goes to the "distressed community" relief program, 30 percent goes to the state, and the remaining 55 percent goes to the municipality in which the sale was made.

(The relief fund provides assistance to Rhode Island cities and towns that have the highest property tax burdens, relative to the wealth of taxpayers.)

However, the conveyance law provides an exemption: the tax doesn't apply when the seller is the U.S. government or the state of Rhode Island or "its political subdivisions."

The pension fund came to own the office building out of bankruptcy court in 2005. The prior owner defaulted on its $21.5-million mortgage and filled for Chapter 11 bankruptcy court protection in November 2004. The Rhode Island pension fund was the mortgage holder on the building.

The building was constructed in 1989 next to the Providence train station, across from the State House, financed by $23 million in bonds issued by the state. The retirement system bought the bonds and then renegotiated the mortgage with the building's original Boston developer, Gateway Eight, in 1999.

The pension fund agreed to extend the mortgage another five years during the 1999 negotiations because the Rhode Island Economic Development Corporation guaranteed that Gateway would repay the mortgage in full. The EDC also guaranteed payment of $3 million worth of the loan if the building were foreclosed and sold at a loss.

Boston Financial Data Services, a tenant in the office building, moved out in mid-2004, and the building became vacant. Without lease payments coming in, Gateway didn't have enough money to pay off the remaining $21.5 million in outstanding debt. The company filed for bankruptcy in November 2004.

In 2005, the pension fund tried to sell the building for $18 million in a bankruptcy court auction, but no qualified bidders stepped forward, so the pension fund was given ownership.

Last January, Fidelity Investments signed a three-year lease on the building, then spent about $13.9 million to renovate it. The company moved 325 employees into the facility in July.

Just as Fidelity was holding its official ribbon-cutting, the pension fund finally sold the building to RI Gateway Properties, a joint venture led by Commonwealth Ventures, the Connecticut firm that co-owns two other large office buildings downtown. The sale price was $20 million.

The ruling by the state's tax administrator means the pension fund will get back the $80,000 in conveyance taxes it paid.

"This is an important first step in making sure the pension fund recovers all the money it is entitled to for the Gateway Building," said Frank Caprio, the state's general treasurer, in a statement. "We will continue to seek restitution from the building's former tenants as a means of reducing the remaining liability for the pension fund and the taxpayers of Rhode Island," he said.

Peter Kerwin, a spokesman for the general treasurer, said the state continues to seek the return of money that Boston Financial received in the form of tax breaks, since the company did not live up to its hiring commitments.

He said the pension system is still out about $2.39 million — the difference between the sale price and the outstanding mortgage — plus some operating expenses while the state owned the building.

Last year, the deputy treasurer for the state said the retirement system was going to ask the EDC to honor its loan guarantee to make up the difference.

Yesterday, Kerwin said he could not find out whether Governor Carcieri had included money in his latest budget proposal to cover that EDC promise.

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